

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SANDRA REESE,

Plaintiff,

vs.

CIV NO. 05-0147 ACT/RHS

OVERLAND SHEEPSKIN CO., INC.
and JUDY ESPEJO,

Defendants.

MEMORANDUM OPINION AND ORDER

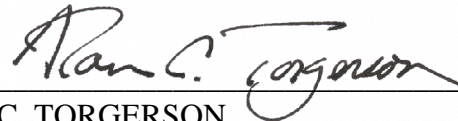
THIS MATTER COMES before the Court on Defendants Overland Sheepskin Co., Inc.'s and Judy Espejo's Motion to Dismiss portions of Plaintiff's Complaint for Failure to State a Claim upon which Relief can be Granted. [Doc. No. 20]. Defendants have moved for dismissal of Defendant Espejo from Count I of the Complaint and for dismissal of Count IV. Defendant's Motion is GRANTED as to Defendant Espejo in Count I but is DENIED as to Count IV.

Count I sets forth Plaintiff's Title VII claim. Case law from the Tenth Circuit has established that Title VII claims against individuals in their individual capacity are not allowed. *Haynes v. Williams*, 88 F.3d 898, 899 (10th Cir. 1996). Plaintiff has agreed in her Response that her Title VII claim in Count I cannot be brought against Defendant Espejo. Count I is therefore DISMISSED AS AGAINST DEFENDANT ESPEJO.

Count IV is titled Wrongful Termination and alleges that Plaintiff was terminated from her employment with Defendant Overland Sheepskin Co. because she filed a Worker's Compensation

Claim. Plaintiff cited to the policy portion of the New Mexico Worker's Compensation Act, §52-1-28.2 in Count IV of her Complaint. Defendants argue that the cited portion of the New Mexico Worker's Compensation Act does not contain a private cause of action for terminated employees.

Plaintiff responded that she is asserting a common law claim for wrongful termination, not a statutory cause of action. New Mexico case law holds that an employee may bring a common law claim for wrongful termination (sometimes called the tort of retaliatory discharge) when the employee alleges that she was terminated in retaliation for filing a worker's compensation claim. *Michaels v. Anglo American Auto Auctions, Inc.*, 117 N.M. 91, 869 P. 2d 279 (1994). Under the notice provisions of the Federal Rules of Civil Procedure a complaint need only give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. *J.D. Conley v. Gibson*, 355 U.S. 41, 47 (1957). The Plaintiff has given fair notice to the Defendants of the grounds of her claim and has alleged sufficient facts to state a claim for wrongful termination in retaliation for filing a worker's compensation claim. Defendant's Motion to Dismiss Count IV is DENIED.



ALAN C. TORGERSON
UNITED STATES MAGISTRATE JUDGE
PRESIDING JUDGE